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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DANIEL T. BRUMFIELD, M.D., and
12 DAINA RYCKMAN,

13 Plaintiffs,

14 vs.

15 SDPD OFFICER MUNOZ, SDPD OFFICER
16 DAWSON, SDPD OFFICER PIERCE,
17 SDPD OFFICER BOLLIG, AMERICO A.
18 ALBALA, M.D., MICHAEL E.
19 MCMANUS, M.D.,

20 Defendants.

CASE NO. 08 CV 0958 WQH (NLS)

ORDER

21 HAYES, Judge:

22 The matter before the Court is the Motion to Dismiss the fifth claim for relief filed by
23 Defendants Americo A. Albala, M.D. and Michael E. McManus, M.D. (Doc. # 4).

24 **BACKGROUND**

25 On May 30, 2008 Plaintiff Daniel T. Brumfield, M.D. ("Dr. Brumfield"), and
26 Plaintiff Daina Ryckman ("Ms. Ryckman") filed the Complaint against San Diego Police
27 Department ("SDPD") Officer Munoz, SDPD Officer Dawson, SDPD Officer Pierce,
28 SDPD Officer Bollig, Americo A. Albala, M.D. ("Dr. Albala"), and Michael E. McManus,
M.D. ("Dr. McManus"). The Complaint alleges the following claims for relief: (1)
Unreasonable (Warrantless) Seizure in violation of 42 U.S.C. § 1983, as to Officer Munoz,
Officer Dawson, and Officer Pierce, by Plaintiff Brumfield; (2) Unreasonable Seizure:

1 Excessive Force in violation of 42 U.S.C. § 1983, as to Officer Munoz, Officer Dawson,
 2 and Officer Pierce, by Plaintiff Brumfield; (3) Unreasonable (Warrantless) Seizure in
 3 violation of 42 U.S.C. § 1983, as to Officer Pierce and Officer Bollig, by Plaintiff
 4 Ryckman; (4) Unreasonable Seizure: Excessive Force in violation of 42 U.S.C. § 1983, as
 5 to Officer Pierce and Officer Bollig, by Plaintiff Ryckman; and (5) Professional
 6 Negligence: Medical Malpractice, as to Defendants McManus and Albala, by Plaintiff
 7 Brumfield.

8 On June 30, 2008, Officer Munoz, Officer Dawson, Officer Pierce, and Officer
 9 Bollig filed an answer to the Complaint. (Doc. # 5). On June 30, 2008, Dr. McManus and
 10 Dr. Albala filed the Motion to Dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of
 11 Civil Procedure. Dr. McManus and Dr. Albala move to dismiss the Complaint's fifth claim
 12 for relief, the only claim for relief directed at them. On August 11, 2008, Plaintiff
 13 Brumfield filed an Opposition to the Motion to Dismiss. (Doc. # 8). On August 15, 2008,
 14 Dr. McManus and Dr. Albala filed the Reply to the Opposition to the Motion to Dismiss.
 15 (Doc. # 11).

16 ALLEGATIONS OF THE COMPLAINT

17 Dr. Brumfield is a "well known" and "well respected" psychiatrist who retired 10
 18 years ago after approximately 40 years of practice. *Complaint*, ¶ 11. Dr. Brumfield and his
 19 wife, Deanne ("Mrs. Brumfield"), live on an 8 acre ranch located east of Highway 5 and
 20 South of Route 56 in San Diego, California. *Id.* The area where Dr. Brumfield and Mrs.
 21 Brumfield live is sparsely populated, home to several large ranches, and frequented by
 22 large populations of laborers and transient workers, many whom are undocumented aliens.
 23 *Id.* Ms. Ryckman is the adult daughter of Dr. Brumfield. *Id.*, ¶ 4.

24 On or about May 28, 2007 between 2:30 and 3:00 a.m., Dr. Brumfield suffered a
 25 hypnogogic episode and awoke believing an intruder was in his home. Mrs. Brumfield
 26 called the police for help. The police arrived, investigated the situation, and left without
 27 taking action. The police were informed at this time that Dr. Brumfield and Mrs.
 28 Brumfield had a firearm in their home for protection. *Id.*, ¶ 14.

1 On or about May 28, 2007 at approximately 3:00 p.m., while Mrs. Brumfield was
2 running errands, Dr. Brumfield was exposed to a significant quantity of insect fogger,
3 needed medical assistance, and dialed 911 for help. *Id.*, ¶ 15. Mrs. Brumfield arrived home
4 while her husband was on the phone with the 911 dispatcher. Mrs. Brumfield took the
5 phone from Dr. Brumfield and related to the 911 dispatcher that Dr. Brumfield believed an
6 intruder was in the home. *Id.*, ¶ 16. Mrs. Brumfield informed the 911 dispatcher that the
7 Brumfields' had a firearm in the home. *Id.*, ¶ 17. The 911 dispatcher told Mrs. Brumfield
8 not go back inside and to wait outside for the police to arrive. *Id.*

9 The police arrived at the Brumfields' home with six squad cars and a canine unit. In
10 addition, a police helicopter hovered over the Brumfields' home. *Id.*, ¶ 19. The police
11 ordered Dr. Brumfield to come out of his home. *Id.* When Dr. Brumfield walked outside
12 of his home without a gun, Officer Munoz, Officer Dawson, and Officer Pierce swarmed
13 him, applied excessive force, and tore his rotator cuff. *Id.* Ms. Ryckman, was curious about
14 the police presence and walked with her dog to the Brumfields' home. Ms. Ryckman was
15 unable to hear the explanations of the officers to restrain her dog. After Ms. Ryckman told
16 the officers to be careful with her father, she was arrested for violating Penal Code § 148.
17 Ms. Ryckman was not booked or charged for violating Penal Code § 148. *Id.*, ¶ 20.

18 The officers acted under the authority of Welfare and Institutions Code § 5150 and
19 took Dr. Brumfield to County Mental Health. *Id.*, ¶ 21. Dr. Brumfield was deemed
20 unsuitable for treatment at County Mental Health, and was transported to Aurora
21 Behavioral Health ("ABH"). *Id.*, ¶ 22. At ABH, Dr. Brumfield was placed in the care of
22 Dr. McManus. *Id.*, ¶ 23. Dr. McManus's medical report stated that Dr. Brumfield had (1)
23 barricaded Mrs. Brumfield in the house; (2) discharged 3 cherry bombs in the house; and
24 (3) discharged a firearm in the house. *Id.* This information is not in the police report. *Id.*

25 On May 31, 2008, after the initial 72 hour hold had expired, Dr. McManus
26 authorized Dr. Brumfield to be held for an additional 14 days. *Id.*, ¶ 24. Dr. McManus
27 certified to the Superior Court that Dr. Brumfield was a danger to others, and was gravely
28 disabled as defined by Welfare and Institutions Code § 5008. *Id.* After he was certified as

1 a danger to others and gravely disabled, Dr. Brumfield was delivered to the care of Dr.
 2 Albala. *Id.*, ¶ 26. Dr. Albala held Dr. Brumfield until June 7, 2008, and released him prior
 3 to the expiration of the 14 day hold. *Id.*, ¶ 27. Dr. Albala diagnosed Dr. Brumfield with
 4 “Dementia with Delusions Features of Unknown Etiology.” *Id.* Dr. Albala prescribed the
 5 anti psychotic medication, Risperdol, to Dr. Brumfield. *Id.*, ¶ 28. Dr. Brumfield could not
 6 properly take Risperdol because he previously suffered a heart attack. *Id.* Dr. Albala did
 7 not disclose the risks associated with Risperdol to Mrs. Brumfield, whom Dr. Albala relied
 8 on to administer the medications. *Id.*

9 Dr. Stephen F. Signer evaluated Dr. Brumfield subsequent to his release and
 10 determined that (1) Dr. Brumfield was not suffering from a mental illness, and (2) there
 11 was no medical reason he could not possess a firearm. *Id.*, ¶ 29.

12 STANDARD OF REVIEW

13 A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure
 14 tests the legal sufficiency of the claim stated in the complaint. The complaint will not be
 15 dismissed if the factual allegations in the complaint are enough to raise the right to the
 16 relief above a speculative level. *Bell Atlantic v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007).
 17 While the complaint does not need to possess detailed factual allegations, “a plaintiff's
 18 obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels
 19 and conclusions, and a formulaic recitation of the elements of a cause of action will not
 20 do.” *Id.* The Court will construe the complaint in the light most favorable to the
 21 nonmoving party and accept well-plead factual allegations as true. *Cahill v. Liberty Mut.*
 22 *Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The Court will dismiss the complaint if the
 23 plaintiff can prove no set of facts in support of his claim which would entitle him to relief.
 24 *Id.* at 338.

25 CONTENTIONS OF PARTIES

26 Defendants McManus and Albala, contend that they are immune from civil liability
 27 for medical malpractice under California Welfare & Institutions Code section 5154 and
 28 section 5278. Defendants contend that a psychiatric patient cannot bring a medical

malpractice action against a psychiatric provider when the patient was detained for treatment pursuant to California Welfare & Institutions Code section 5150.

Plaintiff Brumfield contends that California Welfare & Institutions Code sections 5154 and 5278 do not immunize a health care provider from liability for breach of the applicable standard of care during the period of confinement. Plaintiff contends that immunity does not extend to Dr. Albala's decision to prescribe Resperdol.

DISCUSSION

"The Lanterman-Petris-Short Act ("LPS Act") governs the involuntary treatment of the mentally ill in California." *Jacobs v. Grossmont Hospital*, 108 Cal.App.4th 69, 74 (2003). Under its provisions, an individual may be brought to an appropriate facility for a 72 hour treatment and evaluation if there is "probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled." Cal. Welf. & Inst. Code § 5150. A person admitted to a facility for a 72 hour treatment and evaluation receives an evaluation after they are admitted and receives whatever treatment or care his or her condition requires. Cal. Welf. & Inst. Code § 5152. A person admitted to a facility for a 72 hour treatment and evaluation may be certified for further detention for not more than 14 days if the, "professional staff of the agency or facility providing evaluation services ... has found the person ... a danger to others, or to himself or herself, or gravely disabled." Cal. Welf. & Inst. Code § 5250(a).

Individuals authorized to detain a person for a 72 hour treatment and evaluation are provided immunity for civil and criminal liability when exercising this authority in accordance with the law. Cal. Welf. & Inst. Code § 5278. The section 5278 immunity "applies to individuals or entities who make the decision to detain, when that decision is supported by probable cause." *Jacobs*, 108 Cal.App.4th at 76. Section 5278 does not confer absolute immunity from liability on individuals authorized to detain, treat, and evaluate a person under the provisions of the LPS Act. *Id.* at 78. Absolute immunity from liability under section 5278 would undermine the intent of the LPS Act, and would expose the mentally disordered "to the possibility of grossly negligent or intentional mistreatment,

1 with no legal recourse.” *Id.* at 78. The section 5278 immunity does not extend to
 2 “negligent acts, intentional torts, or criminal wrongs committed during the course of the
 3 detention, evaluation, or treatment,” or to injuries proximately caused by negligence. *See,*
 4 *e.g. Jacobs*, 108 Cal.App.4th at 78 (section 5278 immunity does not extend to defendant
 5 hospital where plaintiff wearing a rubber slipper tripped and sustained injury while walking
 6 down the hospital corridor with a nurse during a 72 hour hold).

7 In *Heater v. Southwood Psychiatric Center*, 42 Cal.App.4th 1068 (1996), plaintiff
 8 Heater was placed on a 72-hour hold pursuant to section 5150. *Id.* at 1075. After his
 9 release, Heater sued the hospital for false imprisonment, assault and battery, and medical
 10 malpractice. Heater’s medical malpractice claim was based solely on the fact that he was
 11 detained involuntarily and treated without his consent. The appellate court affirmed the
 12 judgment of the trial court finding that the section 5278 immunity extended to Heater’s
 13 medical malpractice claim. The court explained that “civil liability ... for medical
 14 malpractice is precluded insofar as the detention is ‘in accordance with the law.’” *Heater*,
 15 42 Cal.App.4th at 1083. “[S]ection 5278 immunity extends to claims based on facts that
 16 are inherent in an involuntary detention that is undertaken pursuant to section 5150.”
 17 *Jacobs*, 108 Cal.App.4th at 78-79.


18 The Complaint in this case alleges that Plaintiff Brumfield was admitted to the care
 19 of Dr. McManus and Dr. Albala pursuant to section 5150. The Complaint alleges that Dr.
 20 McManus and Dr. Albala “failed to adequately diagnose and treat [Plaintiff] Brumfield
 21 resulting in his unlawful and unjustified (continued) imprisonment in a mental health
 22 facility.” *Complaint*, ¶ 58. The Complaint alleges that Dr. McManus failed to properly
 23 investigate the facts which led to Plaintiff Brumfield’s commitment; that Dr. McManus’s
 24 certification to the Superior Court that Plaintiff Brumfield was a danger to others was based
 25 on “unjustified conclusions lacking in factual and legal support”; that the failure of Dr.
 26 Albala to properly examine, treat and investigate the facts led to Plaintiff Brumfield’s
 27 continued commitment; and that Dr. Albala’s prescription of Resperdol could not safely be
 28 taken because Plaintiff Brumfield previously suffered a heart attack. Viewing the

1 allegations in the Complaint in the light most favorable to the Plaintiff, the Court concludes
2 that the fifth claim for relief is based solely upon alleged facts that are inherent in an
3 involuntary detention. “[S]ection 5278 immunity extends to claims based on facts that are
4 inherent in an involuntary detention that is undertaken pursuant to section 5150.” *Jacobs*,
5 108 Cal.App.4th at 78-79. Plaintiff has not alleged facts that would support a conclusion
6 that Dr. McManus and Dr. Albala acted outside the scope of immunity extended by section
7 5278.

8
9 **CONCLUSION**

10 IT IS HEREBY ORDERED that the Motion to Dismiss the fifth and only claim for
11 relief against Defendants McManus and Albala (Doc. # 4) is GRANTED. Defendants
12 McManus and Albala are dismissed from this action without prejudice.

13 DATED: October 23, 2008

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15 **WILLIAM Q. HAYES**
16 United States District Judge
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